



# Central Contra Costa Sanitary District

5019 Imhoff Place, Martinez, Ca 94553

(925) 228-9500 • www.centrsan.org

FAX: (925) 825-1437

*CHARLES W. BATTS*  
General Manager

*KENTON L. ALM*  
Counsel for the District  
(510) 808-2000

*JOYCE E. MURPHY*  
Secretary of the District

## AGREEMENT FOR TECHNICAL CONSULTING SERVICES BETWEEN CENTRAL CONTRA COSTA SANITARY DISTRICT AND CITY OF MILPITAS

AGREEMENT NO. 028544D

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between the **CENTRAL CONTRA COSTA SANITARY DISTRICT**, 5019 Imhoff Place, Martinez, California, hereinafter called the "DISTRICT", and the **CITY OF MILPITAS**, 1265 North Milpitas Blvd., Milpitas, California 95035, hereinafter called "CONSULTANT". In consideration of the mutual promises contained herein, the parties agree that this Agreement will be performed in accordance with the following conditions:

### ARTICLE 1 SERVICES OF CONSULTANT

- 1.1 CONSULTANT shall perform certain professional technical services described in the attached Scope(s) of Work, which is by reference incorporated herein. Where not specifically addressed, such services shall include all services normal and customary to CONSULTANT's profession and incidental thereto. CONSULTANT shall comply with all applicable professional standards of care, including professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, tests, specifications, surveys, software specific to the Assignment, systems, networks, maps, opinions, recommendations, reports, and other services furnished and/or work undertaken by CONSULTANT pursuant to this Agreement.
- 1.2 It is expressly understood between the parties that no employer/employee relationship is intended. The relationship of CONSULTANT to the DISTRICT is that of an independent CONSULTANT. The DISTRICT will not be required to make any payroll deductions or provide Workers' Compensation Insurance coverage or health benefits to CONSULTANT.

## **ARTICLE 2 PERIOD OF PERFORMANCE**

2.1 The completion schedule for the work described in Exhibit A is as follows:

All work shall be completed by June 30, 2004

2.2 It is expected that the work shall begin on or about January 15, 2004 and shall be completed in accordance with the above schedule. No expenses or costs shall be reimbursed which are incurred prior to the effective date of this Agreement, or subsequent to the termination date without the written mutual agreement of the parties. Time is of the essence for this Agreement.

## **ARTICLE 3 COMPENSATION**

3.1 It is agreed that the total compensation to be paid to CONSULTANT for the services described in Article 1 and Exhibit A herein and covered by this Agreement shall not exceed the total maximum allowable fee of \$15,000.

Payment will be made by the DISTRICT within thirty (30) calendar days after receipt of an invoice which shall include the Agreement number and the DISTRICT's Project Manager's name, from CONSULTANT, provided that all invoices are accompanied by sufficient cost documentation to allow the determination of the reasonableness or accuracy of said invoice. In the event that a payment dispute arises between the parties, CONSULTANT shall provide to the DISTRICT full and complete access to CONSULTANT's labor cost records and other direct cost data and copies thereof, if requested by the DISTRICT.

CONSULTANT shall notify the DISTRICT when the cost incurred for the work total approximately seventy-five percent (75%) of the cost ceiling. With the notification, CONSULTANT shall indicate whether the sum of the current costs incurred plus the estimated total cost to complete the task or tasks set forth in the Scopes(s) of Work, shall be greater or less than the cost ceiling. Receipt by the DISTRICT of said notification that the cost of completion of all tasks shall exceed the established cost ceiling will not constitute an approval or authorization to increase the established cost ceiling or a waiver of any rights which the DISTRICT may have under this Agreement.

In no event shall CONSULTANT be entitled to compensation over and above the original maximum allowable fee set forth above, where changes in the scope of the Assignment or the time for performance are necessitated by the negligence of the CONSULTANT or any subcontractor performing under it.

3.2 CONSULTANT shall, at no cost to the DISTRICT, prepare any necessary rework occasioned by CONSULTANT's failure to provide the services specified in Article 1, herein, in a satisfactory manner, due to any act or omission attributable to CONSULTANT, or its agents, including subcontractors.

## **ARTICLE 4 GENERAL PROVISIONS**

- 4.1 All notices to either party by the other shall be made in writing and delivered or mailed to such party at their respective addresses as follows, or to other such address as either party may designate, and said notices shall be deemed to have been made when delivered or five (5) days after mailing.

### **To the DISTRICT:**

#### **CENTRAL CONTRA COSTA SANITARY DISTRICT**

5019 Imhoff Place  
Martinez, CA 94553

Attention: Bill Clement  
Agreement No: 028544D

Telephone: 925-229-7118

### **To CONSULTANT:**

#### **CITY OF MILPITAS**

1265 North Milpitas Blvd.  
Milpitas, California 95035  
Attention: Alan Rich

Telephone: 408-586-3000

- 4.2 No subcontracts shall be awarded by CONSULTANT unless prior written approval is obtained from the DISTRICT.
- 4.3 CONSULTANT shall not assign this Agreement or any portion of it nor delegate any duties under this Agreement unless prior written approval is obtained from the DISTRICT.
- 4.4 No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. The parties acknowledge that the written terms of this Agreement constitute the complete intent and understanding of the parties and that no additional agreement exists between the parties as to any term or terms other than that expressed in this written Agreement.
- 4.5 If any term, covenant, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

- 4.6 Information and materials as may be accumulated by CONSULTANT in performing work under this Agreement, whether complete or in progress, shall be vested in the DISTRICT and none shall be revealed, disseminated, or made available by CONSULTANT to others without the prior written consent of the DISTRICT.
- 4.7 The DISTRICT's review of software, systems, networks, drawings, designs, tests, specifications, reports, opinions, recommendations and incidental consulting work or materials furnished hereunder will not in any way relieve CONSULTANT of responsibility for the professional and/or technical adequacy of its work. Neither the DISTRICT's review, acceptance of, nor payment for, any of the services will be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- 4.8 If CONSULTANT is an individual or sole proprietor, CONSULTANT must furnish its Social Security Number (SSN). If CONSULTANT is a corporation or partnership, CONSULTANT must furnish its Federal Employer Identification Number (FEIN). CONSULTANT shall complete Taxpayer I.D. Number section below.

#### **ARTICLE 5 TERMINATION**

- 5.1 Either party may terminate this Agreement, in whole or in part, in writing, if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination may be affected unless the other party is given not less than ten (10) calendar days' written notice (delivered by Certified Mail, return receipt requested) of the intent to terminate.
- 5.2 Upon termination of this Agreement for any reason or upon receipt of a termination notice, CONSULTANT shall promptly discontinue all services affected, unless the notice directs otherwise, and deliver or otherwise make available to the DISTRICT all data, drawings, specifications, reports, estimates, summaries and such other information and materials as CONSULTANT may have accumulated in performing this Agreement, whether completed or in progress.
- 5.3 Upon termination under ARTICLE 5, the sole right and remedy of CONSULTANT shall be to receive payment for all amounts due and not previously paid to CONSULTANT for services completed or in progress in accordance with the Agreement prior to such date of termination and for services thereafter completed at the request of the DISTRICT and any other reasonable cost incidental to such termination of services. Such payments available to CONSULTANT under this paragraph shall not include costs related to lost profit associated with the expected completion of the work or other such payments relating to the benefit of the bargain.

## **ARTICLE 6 LAWS**

- 6.1 This Agreement shall be in accordance with the laws of the state of CALIFORNIA. Parties further stipulate that this Agreement was entered into in the state of CALIFORNIA and the state of CALIFORNIA is the only appropriate forum for any litigation as a result of breach hereof or any questions risen herefrom.

CONSULTANT shall keep itself fully informed of, and shall observe and comply with, all laws, ordinances, and regulations which in any manner affect those engaged or employed on any work, or the materials and equipment used in any work, or in any way affect the performance of any work, and of all orders and decrees of agencies having any jurisdiction or authority over work performed under the Agreement.

If any discrepancy or inconsistency should be discovered between the Agreement and any such law, ordinance, regulation, order, or decree, CONSULTANT shall immediately report the same in writing to the DISTRICT. CONSULTANT shall be responsible for the compliance by subcontractors of all tiers with the above provisions of this article.

- A. Special attention is directed to Sections 1735, 1770, and 1810 through 1815 et. seq. of the Labor Code of the State of California.
- B. CONSULTANT shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations; and lawful orders of all authorities having jurisdiction for the safety of persons and protection of property.
- C. CONSULTANT shall comply with Sections 12101 through 12901 of Title 22, California Administrative Code. CONSULTANT shall warn all persons at the work site of their exposure to chemicals known to the state to cause cancer or birth defects or other reproductive harm. CONSULTANT shall be responsible for compliance by its subcontractors with this article.
- D. CONSULTANT shall be licensed, as applicable, under the provisions of Chapter 9, Division 3, of the Business and Professions Code of the State of California to do the type of work contemplated in this Agreement and shall be skilled and regularly engaged in the general class or type of work called for under the Agreement.

## **ARTICLE 7 INDEMNITY**

- 7.1 CONSULTANT shall indemnify, hold harmless and assume the defense of, in any actions at law or in equity, the DISTRICT, its officers, employees, agents, and elective and appointive boards, from all claims, losses, damage, including

property damage, personal injury, including death, and liability of every kind, nature and description, arising out of or in any way connected with the negligent acts, errors or omissions, or the willful misconduct of CONSULTANT or any person directly or indirectly employed by, or acting as agent for, CONSULTANT, directly or indirectly related to the provision of any professional services provided hereunder, but not including the sole or active negligence, or the willful misconduct of the DISTRICT. This indemnification shall extend to claims, losses, damage, injury and liability for injuries occurring after the completion of the aforesaid operations, arising from CONSULTANT's work.

Submission of insurance certificates or submission of other proof of compliance with the insurance requirements does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. The obligations of this indemnity article shall apply whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

- 7.2 The DISTRICT does not authorize the impermissible use of any patent or the reproduction of any copyrighted material by CONSULTANT which exceeds "fair use" in the performance of this Agreement. CONSULTANT is solely responsible for any such infringement.
- 7.3 CONSULTANT shall also indemnify the DISTRICT against and save it harmless from any and all loss, damage, costs, expenses, and attorneys' fees suffered or incurred on account of any breach by CONSULTANT, or its employees, agents, or subcontractors, of the aforesaid obligations and covenants, and any other provisions or covenant of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement in the day and year first above written.

**CITY OF MILPITAS**

By: \_\_\_\_\_

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Taxpayer I.D:

SSN \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

FEIN \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**CENTRAL CONTRA COSTA SANITARY DISTRICT**

By: \_\_\_\_\_

Diane Wagner, MPA, C.P.M.  
Purchasing and Materials Manager

Date: \_\_\_\_\_

## **EXHIBIT A SCOPE OF WORK**

### **General Scope**

The City of Milpitas (Consultant) shall convert and enhance approximately 3600 District-owned as-built scans from 8-bit grayscale to 1-bit black and white. The 8-bit drawings are currently indexed, and a database has been created and associated with the digital images to allow for search and retrieval for viewing on our AM/CADD system and through the District's Intranet. Consultant has visited the District to examine the originals, and a complete set of currently available 8 bit scans has been delivered to the Consultant.

The contract for these services is to be a unit price contract. Consultant will examine the scans, and determine categories of effort required, and submit a cost per sheet for each grouping of different category sheets.

### **Initial Release**

An initial release of 200 drawings will be enhanced/converted at a unit price rate of \$3.50 per sheet, for a total of \$700.00. Consultant, upon evaluation and categorization will quote unit price rates for subsequent groupings to the District. The District expects no more than a total of five groupings/categories/rates.

### **Original Data**

All of the 3600+/- 8-bit scans were scanned at 300 or 400 DPI, and take up approximately 260 GB of digital storage.

### **Output product**

It is important to the District that all images be legible. The output data must be one bit, 300 DPI, CCIT Group 4 TIFF format, and retain the same legibility as the original 8-bit scans.

### **Software**

Consultant may use any raster processing software they prefer as long as the output data remains in the same format as delivered (other than being legible, and converted to 1-bit, 300 DPI, CCIT Group 4 TIFF format).

### **Quality Control**

Some of the 8 bit scans may require interactive enhancement. It is important to the District that all images be legible. The converted drawings must be checked for quality to insure that all of the relevant information that was legible on the original 8 bit scans is also legible on the 1 bit scans.

Relevant information as discussed is composed of the original design, the modifications made to the plans resulting from as-built markups, or actual handwritten markup data placed to indicate as-built condition of the infrastructure improvements. Marginal notes and extraneous comments not relevant to the design and installation or intent of the drawings are not required. Questions about data to be left illegible should be referred to the District for determination.

A quality control program must be implemented, which will be subject to District approval. District personnel are available to answer questions, resolve data conflicts, and will perform final quality checks.



**EXHIBIT B  
FEE SCHEDULE**

It is agreed that the total compensation to be paid to Consultant for the services described in Exhibit A herein and covered by this Agreement shall not exceed the total maximum allowable fee of \$15,000. No adjustments to this cost shall be allowed unless authorized by District representative in writing.

An initial release of 200 drawings will be enhanced/converted at a unit price rate of \$3.50 per sheet, for a total of \$700.00.

Consultant, upon evaluation and categorization will quote unit price rates for subsequent groupings to the District. The District expects no more than a total of five groupings/categories and rates. Rates quoted by the Consultant for work subsequent to the initial release will be subject to acceptance by the District prior to commencement of the work. The District makes no guarantee regarding the amount of work or quantities of drawings to be processed.